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AUG 11 2004

In re Application of
John I. Shipp
Application No. 10/706,715
Filed: November 12, 2003
For: SURGICAL LIGATION CLIP

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:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(b)
:
:

OFFICE OF PETITIONS

This is in response to the petition under 37 CFR 1.47(b), filed July 9, 2004.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)" and may include an oath or declaration executed by the inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on November 12, 2003 without an executed oath or declaration and naming John I. Shipp as the sole inventor.

Accordingly, on February 10, 2004, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on July 9, 2004, the instant petition was filed.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
- (2) an acceptable oath or declaration;
- (3) the petition fee;

- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest; and
- (6) proof of irreparable damage.

Applicant lacks item (5), as set forth above.

As to item (5), Petitioner has failed to show or provide proof that Surgicon has sufficient proprietary interest in the subject matter to justify the filing of the application. Petitioner has submitted a copy of the USPTO "Notice of Recordation Of Assignment Document" for provisional application 60/425,511 (to which the above-identified application claims priority), however, an actual copy of the assignment between the non-signing inventor and Surgicon must be submitted. See MPEP 409.03(f). Acceptable proof would also include a copy of the employment agreement between the non-signing inventor and the Surgicon, or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to Surgicon.

Please note, the last known address of the inventor is assumed to be the address listed in the Declaration.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 Box 1450
 Alexandria, VA 22313

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: Customer Service Window
 2011 South Clark Place
 Crystal Plaza Two (left side entrance of building)
 Arlington, VA

Telephone inquiries should be directed to the undersigned at
(703) 306-9200.

A handwritten signature in dark ink, appearing to read 'E. J. Tannouse', followed by a long horizontal line extending to the right.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office